

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

CrI.MC.No. 384 of 2007()

ST.104/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II,
PATHANAMTHITTA
.....

PETITIONER: 2ND ACCUSED

E.B.ASHRAF, S/O. BAVU, ENCHAKUDIYIL
HOUSE, ERAMALLOOR P.O., KOTHAMANGALAM,
ERNAKULAM DIST.

BY ADV. SRI.N.N.ELAYATH

RESPONDENTS: 1ST ACCUSED/COMPLAINANT AND STATE

1. MATHAI DANIEL, S/O. MATHAI,
KUNNATHU VEEDU, THANNITHODE, KOZHENCHERRY,
PATHANAMTHITTA DIST.
2. THE FOOD INSPECTOR,
PATHANAMTHITTA CIRCLE, PATHANAMTHITTA.
3. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R2 & 3 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 01/03/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 384 OF 2007

Dated this the 1st day of March, 2007

ORDER

The petitioner has been arrayed as the 2nd accused in a prosecution under the provisions of the Prevention of Food Adulteration Act by invoking the powers under Sec.20A of the P.F.A. Act. The 1st accused is the vendor. The 1st accused, in the course of trial, took up a contention that the article of food was purchased by him under a valid cash bill from the Proprietor of the National Trading Company, Palakkattuthazham, Perumbavoor. The bill was produced. The bill shows a K.G.S.T. number also. Summons was initially issued in the name of the Proprietor, National Trading Company, Palakkattuthazham, Perumbavoor. Later, the name of the Proprietor was specified and it was shown as 'Ashraf'. The petitioner received the notice. He has appeared before the learned Magistrate. He has been released on bail. He has rushed to this Court now with this petition under Sec.482 of the Cr.P.C. to raise the contention that he is not the Ashraf referred to as the 2nd accused. He was obliged to appear as the summons was wrongly served on him. He is not the Proprietor of National Trading Company.

2. The petitioner contends that inasmuch as he is not

the Proprietor of the said National Trading Company, continuance of the proceedings against the petitioner is unjust and must be quashed.

3. The question is whether the petitioner is the Proprietor of the National Trading Company. I am afraid that the said disputed question of fact cannot be resolved at present by this Court on the basis of the materials available exercising the jurisdiction under Sec.482 of the Cr.P.C. The petitioner must certainly raise this contention before the learned Magistrate. The learned Magistrate must resolve that controversy before proceeding further in the matter. Ascertainment of the identity of the Proprietor does appear to me to be easy because there is a K.G.S.T. registration number shown in the cash bill. Verification must immediately be made as to whether the petitioner is the Proprietor of the National Trading Company or not. If he is not, the proper person must be summoned immediately and the petitioner should not be left to suffer the trauma of unnecessary criminal prosecution.

4. With the above observations, this Crl.M.C. is dismissed.

5. Hand over a copy of this order to the learned counsel for the petitioner. The same shall be produced before the learned

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Magistrate and the learned Magistrate shall forthwith with all expedition decide the question whether the petitioner is the real person shown as the second accused.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge

The grievance of the petitioner is that he has been unnecessarily and unjustifiably arrayed as the 2nd accused by the learned Magistrate in a prosecution under the provisions of the P.F.A. Act invoking the powers under Sec.20A of the P.F.A. Act. According to the petitioner, he is not, in any way, concerned with the article of food which was sold by the vendor and which was found to be adulterated. According to him, on account of mistake/error, the petitioner has been arrayed as an accused. He has already appeared before the learned Magistrate.

2. Call for a report from the learned Magistrate about the circumstances under which the petitioner has been arrayed as the 2nd accused. A copy of the order under which the petitioner has been arrayed as an accused shall also be forwarded to this Court by the learned Magistrate. Such report shall reach this Court by 27/2/2007.

3. The Registry shall ensure that the report is received by then. Call on 28/2/2007.